

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

I. BAHCALL STEEL AND SUPPLY

and

Case 18--CA--8246

OVER THE ROAD, CITY TRANSFER,
COLD STORAGE, GROCERY AND
MARKET DRIVERS, HELPERS AND
INSIDE EMPLOYEES UNION, LOCAL
NO. 544, AFFILIATED WITH
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA

DECISION AND ORDER

Upon a charge filed by the Over the Road, City Transfer, Cold Storage, Grocery and Market Drivers, Helpers and Inside Employees Union Local No. 544, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, on 31 May 1983,¹ the General Counsel of the National Labor Relations Board issued a complaint on 14 July against I. Bahcall Steel and Supply, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act.

¹ Unless otherwise noted, all dates referred to are 1983.

The complaint alleges that on 5 May, following a Board election in Case 18--RC--13393, the Union was certified as the exclusive collective-bargaining representative of the Respondent's employees in the unit found appropriate. (Official notice is taken of the ''record'' in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g), amended Sept. 9, 1981, 46 Fed. Reg. 45922 (1981); Frontier Hotel, 265 NLRB No. 46 (Nov. 9, 1982).) The complaint further alleges that since 5 July the Company has refused to bargain with the Union. On 26 July the Company filed its answer admitting in part and denying in part the allegations in the complaint.

On 23 August, the General Counsel filed a Motion for Summary Judgment. On 6 September, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Company filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint and its response to the Notice to Show Cause, the Company admits its refusal to bargain with the Union as the exclusive collective-bargaining representative of its employees, but attacks the Union's certification in the underlying representation proceeding. The Company maintains that the certified unit of local and over-the-road truck drivers is not appropriate. The Company contends that there should be two separate units. The General Counsel argues that all material issues have been previously decided. We agree with the General Counsel.

The record, including the record in Case 18--RC--13393, reveals that on 4 March the Regional Director for Region 18 issued a Decision and Direction of

Election. On 17 March the Company filed with the Board a request for review of the Decision and Direction of Election. On 4 April a secret-ballot election was conducted under the supervision of the Regional Director for Region 18. On 8 April, by direction of the Board, the Company's request for review was denied. On 19 April a tally of ballots issued which showed that of approximately four eligible voters, three cast valid ballots for, and one against, the Union; there were no challenged ballots.

On 25 April the Company filed "'Objections to the Conduct of Election and Certification of Bargaining Representative and Request for Reconsideration.'" On 5 May the Acting Regional Director for Region 18 issued a Supplemental Decision and Certification of Representative. On 18 May the Company filed the "'Employer's Request for Review of the Regional Director's Supplemental Decision and Certification of Representative, and the Employer's Exceptions to said Supplemental Decision and Certification and to the Failure of the National Labor Relations Board to Reconsider Its Decision Denying the Employer's Request for Review.'" On 15 June, by direction of the Board, the Company's 18 May request for review was denied.

By letters dated 11 May and 23 June, the Union requested the Company to recognize and bargain with Local No. 544. By letter dated 5 July, the Company acknowledged receipt of the Union's bargaining demands and stated that "'[s]ince we intend to challenge the validity of this certification . . . we must decline to recognize and bargain with Local No. 544 at this time.'"

It is well settled that in the absence of newly discovered and previously unavailable evidence or special circumstances, a respondent in a proceeding alleging a violation of Section 8(a)(5) is not entitled to relitigate issues that were or could have been litigated in a prior representation proceeding.

See Pittsburgh Glass Co. v. NLRB, 313 U.S. 146, 162 (1941); Secs. 102.67(f) and 102.69(c) of the Board's Rules and Regulations.

All issues raised by the Company were or could have been litigated in the prior representation proceeding. The Company does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Company has not raised any issue that is properly litigable in this unfair labor practice proceeding. Accordingly we grant the Motion for Summary Judgment.²

On the entire record, the Board makes the following

Findings of Fact

I. Jurisdiction

The Company, a Wisconsin corporation, with an office and place of business in Crystal, Minnesota, is engaged in the operation of a steel service center, purchasing steel in large quantities and selling it in smaller quantities to its nonretail customers. During the 12-month period ending 31 December 1982, Respondent, in the course and conduct of its business operation, purchased and received at its Crystal, Minnesota, facility products, goods, and materials valued in excess of \$50,000 directly from points outside the State of Minnesota. We find that the Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

² Chairman Dotson did not participate in the underlying representation proceeding.

II. Alleged Unfair Labor Practices

A. The Certification

Following the election held 4 April, the Union was certified 5 May as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time local and over-the-road truck drivers employed by the Employer at or out of its facility located at 7600--32nd Avenue North, Crystal, Minnesota; excluding office clerical employees, guards, and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since 11 May, the Union has requested the Company to bargain, and since 24 May the Company has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

Conclusions of Law

By refusing on and after 24 May to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial

period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. Mar-Jac Poultry Co., 136 NLRB 785 (1962); Lamar Hotel, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); Burnett Construction Co., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, I. Bahcall Steel and Supply, Crystal, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Over the Road, City Transfer, Cold Storage, Grocery and Market Drivers, Helpers and Inside Employees Union, Local No. 544, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time local and over-the-road truck drivers employed by the Employer at or out of its facility located at 7600--32nd Avenue North, Crystal, Minnesota; excluding office clerical employees, guards, and supervisors as defined in the Act.

(b) Post at its facility in Crystal, Minnesota, copies of the attached notice marked "'Appendix.'"³ Copies of the notice, on forms provided by the Regional Director for Region 18, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

13 February 1984

Donald L. Dotson, Chairman

Don A. Zimmerman, Member

Robert P. Hunter, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

³ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "'POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'" shall read "'POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.'"

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Over the Road, City Transfer, Cold Storage, Grocery and Market Drivers, Helpers and Inside Employees Union, Local No. 544, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time local and over-the-road truck drivers employed by the Employer at or out of its facility located at 7600--32nd Avenue North, Crystal, Minnesota; excluding office clerical employees, guards, and supervisors as defined in the Act.

I. BAHCALL STEEL AND SUPPLY

(Employer)

Dated ----- By -----
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Federal Building, Room 316, 110 South Fourth Street, Minneapolis, Minnesota 55401, Telephone 612--725--2615.